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REMARKS

Claims 1-9, 16 and 17 are rejected, under 35 U.S.C. § 102(b), as being anticipated either by Bendzick '451 and/ or Breezer et al. '628. The Applicant acknowledges and respectfully traverses the raised anticipatory rejections in view of the above amendments and following remarks.

Incorporating the Applicant's previous remarks in this regard, the Applicant notes that the references cited by the Examiner, Bendzick '451 and Breezer et al. '628 do not relate to a basket mold, or the making of a basket mold or a basket as specifically recited in Applicant's claim 1. Breezer et al. '628 is merely a wood and plastic pallet useful for the storage and movement of generally heavy and/or bulky items. Such a pallet is generally handled, for instance, by a fork lift truck to move the supported items on the pallet. The Applicant has made a thorough study of Breezer et al. '628 and can find no disclosure, teaching or even a suggestion of such a pallet being utilized or imagined as a "mold" as alleged on page 5 of the official action. Neither is the pallet "expandable" as similarly alleged on page 5. In fact, every indication in the reference is that the disclosed pallet is nothing more than a particular conventional size used throughout the world commercial economies to move goods in transportation. In this regard, the Applicant does not believe that Breezer et al. '628 would even rise to the level of rendering the presently pending claim obvious, much less anticipating the claimed features of the present invention as asserted by the Examiner.

Bendzick '451 relates to a stripper device for molded articles. While the molded article, a bucket B as shown and disclosed by Bendzick '451, is a type of container as discussed at column 2, line 67 and as seen in Figures 1 and 2, it is not a basket, nor is such a stripper device capable of being utilized with, or as a basket mold. Observing the stripper device as a whole not only does such a device not include all the features of the presently claimed invention, but such a device makes it impossible to produce such a basket, as specifically claimed by

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Applicant. Thus, neither of the cited reference discloses, teaches or even suggests a "basket mold" as recited by the Applicant, and as the Examiner is aware, in order to properly support an anticipation rejection under 35 U.S.C. § 102(b) the cited reference must disclose each and every feature of the presently claimed invention.

Importantly, claim 1 specifically recites "An expandable basket mold for making a basket..." A basket is a particular type of container made of woven pieces of reed, wood or veneer or really any material, even metal. The Random House Dictionary of the English Language, Unabridged Edition (1971) defines a basket as: 1. A receptacle made of twigs, rushes, thin strips of wood, or other flexible material woven together. 2. A container made of pieces of thin veneer used for packing berries, vegetables etc. In other words, a basket is substantially different from a mere bucket or cup B.

Also, where it recites a structurally definitive element that lends meaning and vitality to the claim, the preamble is considered part and parcel of the claim and a limiting feature thereof. The Applicant has specifically included the feature of a "basket mold" in the preamble to differentiate this aspect of the present invention from other types of molds for any other articles. The Federal Circuit has continuously upheld the notion that the claim preamble can include and recite limitations to the claim, "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or if the claim preamble is 'necessary to give life, meaning and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." Pitney Bowes, Inc. vs. Hewlett-Packard Company, 182 F.3d 1298, 1305, 51 USPQ 2d 1161, 1165- 66 (Fed. Cir. 1999). In addition, where the Applicant has relied on the preamble to distinguish the invention from the prior art, the features of the preamble are certainly considered limitations "Clear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art transforms the preamble into a claim limitation because such reliance indicates use of the preamble to define in part, the claimed

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invention..." Catalina Mktg. Int'l v. Coolsavings.com Inc., 289 F.3d at 808-09 62 USPQ 2d at 1785.

Notwithstanding the above, in order to facilitate the allowance of this application, the Applicant has amended claim 1 to include the subject matter of claims 2 and 16 which is thus now believed allowable. Noting the anticipation rejections of claims 1, 16 and 17 in view of Bendzick '451, the Applicant agrees that the combination of claims 1 and 2 is therefore not anticipated by Bendzick '451. Similarly, where claims 1-9 are rejected in view of Breezer et al. '628, the combination of claims 1, 2 and 16 is not anticipated by Breezer et al. '628. This amendment thus overcomes both the anticipation rejections, and claim 1, as well as the remaining dependent claims 3-9 and 17 are therefore believed to be in condition for allowance.

As none of the substantive subject matter of claims 1, 2 and 16 was amended or changed in any manner, but merely incorporated as a whole into the respective independent claim, no further search or consideration is believed necessary.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised anticipation rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Bendzick '451 and Breezer et al. '628 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejections should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

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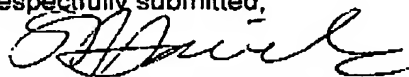
If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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